

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5554 OF 1987

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

RS UPADHYAY
VERSUS
STATE OF GUJARAT & ANR.

Appearance:

MR DC RAVAL for Petitioner
MR SK PATEL for Respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 30/12/1999

C.A.V. JUDGMENT

#. The petitioner, an officer of the police department of the State of Gujarat, is praying to treat the impugned

order No.K-1/16/1987 dated 10th October, 1987, of the respondents in as much as it supersedes the petitioner in the matter of promotion to the post of police inspector, as illegal, unconstitutional, without jurisdiction, null, void and of no effect whatsoever. Further prayer is made for directions to the respondents to consider the case of petitioner for promotion to the post of police inspector and to promote him to the said post with effect from the date on which his immediate junior was promoted to the said post. As usual, prayer is also made for consequential benefits.

#. Reply to the special civil application has been filed by respondents.

#. The learned counsel for the petitioner made a grievance that even the persons against whom departmental inquiries were pending, have been promoted. It has next been contended that the petitioner has extra ordinary service record and he should not have been superseded in promotion. Lastly, it is contended that even if the criteria for promotion is merit-cum-seniority, only the minor adverse remarks in his service record should not have been made a ground to supersede him.

#. In contra, Mr.S.K.Patel, learned counsel for respondents submitted that this court, under Article 226 of the Constitution may not sit as an appellate court over the decision of departmental promotion committee in the matter of adjudging suitability of officers for promotion. It has next been contended that the criteria for promotion to the post of police inspector from the feeder post of police sub inspector is proved merit and efficiency where seniority is of little significance. Promotions are to be made on the basis of assessment of comparative merits of the officers and in case where the junior officer is found to be more meritorious than senior, he can be given promotion, that is to say, a senior can be superseded to which no exception can be made. Seniority may have relevance for determining the zone of consideration or where everything is found to be equal amongst two officers for giving preference in promotion. Lastly, it is contended that in the service record of petitioner, there are adverse remarks as a result of which promotion has not been given to him. So far as the contention of the learned counsel for the petitioner that the officers against those departmental inquiry were pending were given promotion, Mr.Patel submits that this is not the pleading of the petitioner in the special civil application and the same may not be considered.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. I do not find any merits in the contention of the learned counsel for the petitioner that the criteria for promotion is merit-cum-seniority. Criteria is proved merit and efficiency and when this criteria is there for promotion, I find sufficient merits in the contention of Mr.Patel, learned counsel for respondents that on comparative merits, a senior can be superseded in promotion. The petitioner was superseded in promotion as what the learned counsel for the petitioner submits, in the year 1984, but that supersession has not been challenged by petitioner in this special civil application. In this special civil application challenge has been made of his supersession in the year 1987 as it clearly comes out from the impugned order under which his juniors were promoted. In the special civil application, the petitioner stated that adverse remarks communicated to him for the years 1980-81 and 1982-83 on his representation have been expunged. The adverse remarks are there for the year 1979-80.

#. In the reply to the special civil application, the respondents have come up with the case that there are adverse remarks in the service record of the petitioner for the year 1974-75, 1975-76, 1976-77 and 1981-82. It is also stated by respondents that these adverse remarks were communicated to the petitioner. In these factual averments, it is stated that the petitioner's record was not good.

#. Rejoinder to the reply has been filed by petitioner and in which he admitted that there were adverse remarks in his annual appraisal performance report for the year 1981-82. Those remarks were communicated to the petitioner is also an admitted fact. The petitioner is also not denying this fact that for the years 1974-75, 1976-77, adverse remarks were there. The petitioner is an officer and being an officer belonging to disciplinary service as well as concerned with the enforcement of law, much more standard and degree of discipline is expected from him. It is really shocking that he has conveniently and it appears, deliberately, concealed the fact that in his annual appraisal performance report, adverse remarks were there for the years 1974-75, 1975-76, 1976-77 and 1981-82. Concealment of these facts which has relevance to the matter in question is itself sufficient to disentitle the petitioner from getting any relief from this Court. A person who approaches this Court for

getting relief under its extra ordinary equitable jurisdiction, it is his duty and legal obligation to candidly and fairly disclose all the material facts. This precisely has not been done by petitioner in this special civil application. The petitioner, despite of the fact that adverse remarks were communicated to him, has only disclosed the adverse remarks for one year, i.e. 1979-80. So far as other adverse remarks are concerned as they were not favourable to him, he has not disclosed the same. This conduct of the petitioner deserves to be deprecated and accordingly it is deprecated. At one point of time I thought of dismissing this writ petition only on this ground, but I considered the matter on merits also.

#. These promotions have been made under the order dated 10th October 1987 of the persons junior to petitioner and as usual, as what it is prevalent in this court, a copy of this order has not been produced on the record of this special civil application. In the absence of that order, I fail to see how the same can be treated to be as illegal, unconstitutional, without jurisdiction, null, void and of no effect whatsoever. Legality, propriety and correctness of the order aforesaid could have been gone into and decided only when this order is on the record. Moreover, under this order, many of the persons have been promoted and in the absence of those persons otherwise also, no such declaration could have been given. In para-10 of the special civil application, the petitioner prayed for quashing and setting aside of the order impugned in as much as it supersedes the petitioner in the matter of promotion to the post of police inspector but this can only be done or possibly be done on presentation of this order by the petitioner in the court. In this respect, reference may have to the decision of the apex court in the case of Surendra Singh v. Central Government & Ors. reported in AIR 1986 SC 2166. Be that as it may, the criteria for promotion is proved merit and efficiency and only on comparative merits, if the petitioner is found to be meritorious in comparison to his juniors he can be given promotion and not as a rule or right. In the presence of service record it is reflected, and on which there is no dispute, that there was adversity in his annual appraisal performance report for the year 1981-82, the decision of the departmental promotion committee cannot be said to be illegal or arbitrary to the extent what it is contended by the learned counsel for the petitioner in the special civil application. The grievance made that the persons against whom the chargesheet were there have been given promotion is concerned, it is suffice to say that

firstly, the petitioner has not produced any cogent and satisfactory evidence in support of this contention. Secondly, this contention has been raised in the rejoinder to the reply, meaning thereby, not in the original petition, and thirdly, the persons against whom these allegations have been made are not party before this court. In the absence any cogent and satisfactory evidence this factual aspect cannot be accepted. Otherwise also, in case it would have been really a ground for challenging of his supersession by the petitioner this should have been raised in the special civil application itself so that the respondents could have opportunity to give reply to the same. This raising of substantial plea in the rejoinder cannot be permitted. Lastly, behind the back of these persons on these question no interference can be made by this court. Otherwise also, even if it is taken that those officers were given promotion, at the most said decision may be erroneous qua those officers, but on the basis of this erroneous decision, how a plea of discrimination can be made by the petitioner? Merely because against them departmental inquiries were pending or the annual confidential reports were also bad, the petitioner cannot be given any relief, otherwise, the very criteria of giving promotion on proved merits and efficiency will be rendered nugatory. The petitioner, what in fact is claiming that these adverse remarks for two years in his service record be ignored and he may be given promotion. That cannot be done for the reasons that this court will not perpetuate any illegality. A Mandamus cannot be issued to the respondents to do illegal things or the things contrary to the rules and regulations. Mandamus can only be issued to the respondents to do their legal duties and to act according to rules, regulations and provisions of the Constitution. Right of consideration for promotion has not been denied to the petitioner. It is a different matter that because of his own blemished service record, he could not stand to merits.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this court stands vacated. No order as to costs.

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[sunil]